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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/689,263	10/20/2003	Tomoaki Kimura	JP920020193US1	2886

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EXAMINER

MERCEDES, DISMERY E

ART UNIT PAPER NUMBER

2651

DATE MAILED: 01/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/689,263

**Applicant(s)**

KIMURA ET AL.

**Examiner**

Dismery E Mercedes

**Art Unit**

2651

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 20 October 2003.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☒ Claim(s) 1-12 is/are allowed.  
6) ☒ Claim(s) 13-18 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 20 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some \* c) ☐ None of:  
1. ☒ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_.

***Claim Rejections - 35 USC § 101***

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims 13-18 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claim 13 is drawn to a “program” *per se* as recited in the preamble and as such is non-statutory subject matter. Claim 13 is drawn to a “computer program product, residing on a computer usable medium”, which is interpreted as meaning that the applicant wants protection for the computer program, *per se*. If the applicant intended the claim to be limited to a computer readable medium having a computer program stored thereon, the claim should be revised to properly refer to such in the preamble. See MPEP § 2106.IV.B.1.a. Data structures not claimed as embodied in computer readable media are descriptive material *per se* and are not statutory because they are not capable of causing functional change in the computer. See, e.g., *Warmerdam*, 33 F.3d at 1361, 31 USPQ2d at 1760 (claim to a data structure *per se* held nonstatutory). Such claimed data structures do not define any structural and functional interrelationships between the data structure and other claimed aspects of the invention, which permit the data structure's functionality to be realized. In contrast, **a claimed computer readable medium encoded with a data structure** defines structural and functional interrelationships between the data structure and the computer software and hardware components which permit the data structure's functionality to be realized, and is thus statutory. Similarly, computer programs claimed as computer listings *per se*, i.e., the descriptions or expressions of the programs are not physical “things.” They are neither computer components

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nor statutory processes, as they are not “acts” being performed. Such claimed computer programs do not define any structural and functional interrelationships between the computer program and other claimed elements of a computer, which permit the computer program's functionality to be realized.

***Allowable Subject Matter***

3. Claims 1-12 are allowable over the prior art of record.

The following is a statement of reasons for the indication of allowable subject matter:

Claims 1 and 7 are allowable over Prior Art of Record since the cited references taken individually or in combination fails to particularly disclose or suggest a device which includes a recording position determining section wherein “the block gap having a length determined by the error information about the write error, and determining a recording position on the recording medium for a subsequent write that is the block gap away from a last error free write operation;” and “wherein the length of the block gap provides both a no-write zone for subsequent writes as well as a description of the write error.” It is noted that the closest prior Art Wu et al. (6,384,997 B1) shows a similar system in which data is written on another sector block after an error has being encountered, and Jewell et al. (US 6,111,708) discloses a rewrite when a read gap is flagged as an error. However, Wu et al. fails to disclose determining a recording position on the recording medium for a subsequent write that is the block gap away from a last error free write operation; and Jewell et al. fails to disclose the block gap having a length determined by the error information about the write error.

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*Conclusion*

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.


- Propps et al. (US (2004/0001408 A1) discloses a defect management system for write-once storage disk
- Ogawa et al. (US 2003/0237024 A1) discloses a recording/reproducing apparatus
- Ito et al. (US 6,292,445 B1) discloses an information recording medium, information recording method, information recording apparatus and information reproducing apparatus.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dismery E Mercedes whose telephone number is 703-306-4082. The examiner can normally be reached on Monday - Friday, from 9:00am - 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sinh Tran can be reached on 703-305-4040. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Dismery E Mercedes  
Examiner  
Art Unit 2651

  
W. R. YOUNG  
PRIMARY EXAMINER

DM